

ZONING BOARD OF APPEALS
MEETING MINUTES
DECEMBER 14, 2010
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:03 P.M.

ATTENDANCE:

Members Present: Deland Davis James Moreno
Greg Dunn Becky Squires
Mike Fatt John Stetler

Members Excused: Carlyle Sims

Staff Present: Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

Appeal #Z-17-10: (24 College Street)

Mr. John Stetler stated for the record this was a petition from Roger & Shirley Knapp, 1804 Reed Avenue, Kalamazoo, MI 49001; requesting a variance to waive the required 50 ft. front-yard setback for an Adult Foster Care Facility, and allow a 21 ft. front-yard setback. Parcel is zoned "R3-B Multiple Family Residential District" described as: (24 College Street, Parcel #5240-00-072-0). The permit application is requested pursuant to Planning and Zoning Code, Chapter 1290.01 (b) (7) (B).

Mr. Glenn Perian stated appeal #Z-17-10 is a petition from Roger and Shirley Knapp seeking a dimensional variance to operate an Adult Foster Care Small Group Facility at 24 College Street where the building sits 21' from the front property line. The subject lot is ½ acre in size with 165' of frontage. The structure was constructed in 1860 as a single family home and is located in the R-3B zoning district. The petitioners have submitted their application to the State for a Small Group Home license and have approvals from the Battle Creek City Commission for a special use permit subject to approval from the zoning board of appeals to waive the 50' front yard setback requirement for state licensed facilities as

outlined in Chapter 1290.01. Staff is recommending approval of appeal #Z-17-10 based on the following findings and those listed in the staff report:

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will exist if the variance is not granted in that the structure was built in its current location in 1860. This fact should not restrict the potential uses of the property in this case.
- 2) Staff does not believe the practical difficulty is self created in this case.
- 3) Staff finds that the practical difficulties are exceptional and peculiar to the subject property.
- 4) Staff believes the alleged practical difficulties result from conditions that do not generally exist throughout the City. Most established platted lots in the City are considerably smaller than ½ acre in size and the request has been reviewed by the Planning Commission and approved by the City Commission for a special use permit subject to the variance being granted.

Mr. & Mrs. Roger & Shirley Knapp, was present to speak on behalf of their request. Stated they live in Kalamazoo at 1329 Floral Drive and the property they own on College Street is a beautiful, very stately Greek Revival house and would be a good use as a Foster Care Home, also noted there were other homes in the area that are setback less than what their property was and would plan to have party events etc. in the rear yard and that it will be well kept and appear as a residential home in the area; noted that the State requires it to have the appearance of a residential home that is well kept. Noted their Special Use Permit was approved by the Planning Commission and also last week by the City Commission.

Ms. Barbara Dennis, 17 Elm St, owner of 35 & 37 Calhoun Street, stated for many, many years she has owned property adjacent to this property and have had problems with this property. Said they have had young persons in the rear of the yard and also broke into this property many times; have also had High School video incidents at this property. Stated the owners do not care about this home and are only doing this because it is the only use they can think of to make money; that the property has fallen into disrepair and have been given opportunity to repair and the permits have expired from time to time and not treat the property with its stature and former elegance should have been treated as it used to be a great property. Noted she has owned property nearby and have put up with these issues regarding this property for many years and feels if the board grants this variance it will be an atrocity.

Mr. Dunn asked Ms. Dennis if she had mentioned these issues to the City Commission and Planning Commission. Ms. Dennis stated she had complained to Ms. Bedsole and Mr. McKinley many times prior to getting to this point and have done diligent addressing of this property to the City of Battle Creek. Said she was not at the City Commission meeting because she had appointments outside of town in Grand Rapids. Noted she had only received the notice for ZBA meeting and not for the Planning Commission meeting notices. Noted the brush had been removed that she had complained about previously.

Mr. James Moreno asked Planning Staff if prior to the Planning Commission and City Commission voting on this, was the concerns that were registered with Susan Bedsole and Dennis McKinley apart of the record or was that not surfaced.

Ms. Parrish noted that it is on city record that this property has been on Dangerous Buildings and Housing Board of Appeals and that notices are sent out to everyone within 300 ft. of the property informing them of the petitioners request for the Planning Commission and what went before the City Commission. Anyone with concerns regarding their request is then submitted to the Planning Commission and City Commission, so everyone has an opportunity to be heard on what their issues or

concerns are or if they are for or against. What has happened prior to this property such as being on Dangerous Buildings or Housing Board of Appeals is where they work with the property owner to bring that property up to the city code and in compliance; which is separate from their request for a Special Use Permit or Zoning Variance.

Ms. Dennis stated that the only notification she had receive was for today's meeting and even though she owns the house next door, she had not received anything about the City Commission meeting or Planning Commission. Noted she is at her property at least twice a week and is a visual landlord and do not keep a slum property and try very hard to let her tenants know if they cause problems they will be out of her property. Stated in the past few weeks no one has been working on the Knapp's property and will say they did clean out the brush row along the alley and not sure if it was done by the Knapp's or the City.

Ms. Knapp stated Ms. Dennis was correct regarding the homes condition and had tried to rent but the home was too large for a single-family home. Stated the property was in a condition that it should have been torn town or repaired but effort had not been put into maintaining this property. Said it has been on Dangerous Buildings and before the Housing Board of Appeals, but feels the home is too revival to be torn down and now have persons working on the repairs and have put money into it; when they finally committed to do the foster care idea for its use, they have replaced windows etc. Noted she has spoken to the neighboring tenants and they are happy it is being fixed-up and used for a foster-care. Ms. Knapp said that Ms. Dennis had wanted to buy this property and use as a parking lot. Said they have been fixing the property per State code and have made a commitment to the City of Battle Creek and have spent a lot of money for the repairs and to bring it up to city code. Stated she would like to be Ms. Dennis friend in the future and is not sure if that will happen, but she cannot change the past.

Mr. James Moreno asked what the timeline was for them to open the foster-care. Ms. Knapp stated they wanted to be ready in the Fall but with State regulations changes that are needed to be done, they are hoping for February to have the interior work done and are looking at April or May when the weather gets better and exterior painting will be done.

Mr. Roger Knapp, 1329 Floral Drive, stated his wife had recently spoken to the principal of Battle Creek Central High School and they have welcomed them to the area and feel it would be a great addition and solve some problems for that area. Ms. Knapp stated she had also talked to the neighbors and have heard more positive than negative from them and had also submitted letters of support from them to the Planning Commission (did not bring in with her today).

Mr. John Stetler reminded the board that this was for the approval of 21 ft. setback verses 50 ft. and not the merits, or lack thereof, of the project.

Mr. Greg Dunn had a question for staff; asked if notices were mailed to neighbors and also published. Ms. Parrish stated that when petitions are received, notices are mailed out and is sent to all properties within 300 ft. radius. They are mailed to property owners and also sent to occupants if a property is not owner occupied; it is also published in the Battle Creek Shopper News at least 15 days prior to each meeting for both the Planning Commission and Zoning Board of Appeals.

Mr. Dunn asked if we have received any other written comments other than the comments heard today. Ms. Parrish stated not for the Zoning Board of Appeals.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. MIKE FATT MADE A MOTION TO APPROVE #Z-17-10 TO ALLOW A DIMENSIONAL VARIANCE FOR A 21 FT. FRONT-YARD SETBACK WHERE A 50 FT. FRONT-YARD SETBACK IS REQUIRED BY ORDINANCE FOR AN ADULT FOSTER CARE FACILITY FOR PROPERTY LOCATED AT 24 COLLEGE STREET BASED ON THE RECOMMENDATIONS AND FINDINGS IN THE STAFF REPORT; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Dunn asked when this project moves forward does it have to meet certain standards in terms of construction and upkeep of the property in order to obtain it's licensing as a group care facility subject to the State and City. Mr. Perian stated that is correct. Mr. Dunn asked if they would need to approve this motion or if they can put a sunset for six-months and then if the property is ready to open and then ask the appellant to come back and have another hearing. Mr. Perian stated he did not believe this was something they could do, that a variance should be based on the conditions present before them and either it is worthy of a variance or it is not; then asked to defer to the Deputy City Attorney. Ms. Jill Steele stated they cannot grant a variance and say it is only good for six months; you either grant it or you do not.

Ms. Becky Squires said her viewpoint is there have been many properties torn down within the city; on a positive note she is pleased to see something being done instead of tearing them down and will be in favor of this request.

Mr. James Moreno asked the planning staff and deputy attorney; if the variance is granted and this project lingers to six months to one year later and still sitting; having before the Dangerous Buildings would there be any recourse from the city to come back to the appellant and say it is still in disrepair. Mr. Glenn Perian stated the City Commission has issued a Special Use Permit subject to the variance being granted today with other conditions attached and would need to maintain their State license for the Adult Foster Care; today they are strictly looking at the setback requirements for the property.

Mr. Moreno stated he is concerned that if it does not come to fruition will it revert back to being a lump of coal and nothing will come of it. Mr. Perian stated the possibility is there that if the property owners choose to do nothing with the property that it will go through the Dangerous Buildings process again.

Ms. Jill Steele stated there have been a number of properties that have gone through the Dangerous Buildings process where there has been a order finding that the property can be demolished; where the property owner comes to the city and enter into an agreement to bring it into compliance and do the repairs and are given a set period of time to get the work done. If not done then the City can still go through with the order to demolish that was already in place, and with this property there is an agreement to that effect.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN FAVOR; NONE OPPOSED MOTION APPROVED.

Ms. Shirley Knapp stated that the State of Michigan is stringent on their regulations and invited the board to come and see their property.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE OCTOBER 12, 2010 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. GREG DUNN ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn stated he had enjoyed sitting on this board with the other members for another year and wished everyone a happy and safe holiday season and look forward to seeing everyone in the year 2011.

Mr. John Stetler said he wanted to comment that he finds very few properties in the city with the setback 50 ft. from the front property line; that most homes are generally 20 to 35 feet, once and a while 40 ft. Therefore, very few meet this qualification and wonder if we should look at qualification and reduce it to an average of what is in a neighborhood or some other language other than 50 ft., which seems to be a very stringent requirement that very few properties will ever meet and will always come before them.

Mr. James Moreno said this particular setback; isn't it based on the fact of what the property is going to be use for and not just a general requirement? Mr. Stetler stated no, it is for this particular use of this property, and he feels a 50 ft. setback is too stringent.

Mr. Glenn Perian stated this year we had one other Adult Foster Care approved; it was for 20th Street by Summit Pointe and it had a 50 ft. setback.

Mr. Perian asked on behalf of the Mayor to ask Zoning Board members: James Moreno, Greg Dunn, Mike Fatt and Deland Davis if they would want to renew their term; as it is due to expire in January 2011. All agreed to renew their term.

ADJOURNMENT: Mr. John Stetler moved for the meeting to be adjourned; all in favor, meeting was adjourned at 4:45 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department